

5-11.000 ENVIRONMENTAL CRIMES

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5-11.101

Statutes Administered

Prosecutions initiated pursuant to the following statutes are deemed to be environmental crimes, and the provisions of this chapter apply to all such cases:

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136-136y

Energy Supply and Environmental Coordination Act, 15 U.S.C. §§ 791-798

Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692

Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201-1328

Protection of Navigable Waters and of Harbor and River Improvements Generally, Rivers and Harbors Appropriations Act, Refuse Act, 33 U.S.C. §§ 401-467

Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §§ 1251-1387

Marine Protection Research and Sanctuaries Act, (also known as the Ocean Dumping Act), 33 U.S.C. §§ 1401-1445

Deepwater Port Act, 33 U.S.C. §§ 1501-1524

Act to Prevent Pollution From Ships, 33 U.S.C. §§ 1901-1912

Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26
Atomic Energy Act, 42 U.S.C. §§ 2011-2296
Noise Control Act, 42 U.S.C. §§ 4901-4918, 42 U.S.C. § 4910 (criminal provision)
Solid Waste Disposal Act (including, in Subchapter III, the Resource Conservation and Recovery Act (RCRA)), 42 U.S.C. §§ 6901- 6992k
Clean Air Act, 42 U.S.C. §§ 7401-7671
Comprehensive Environmental Response, Compensation & Liability Act (CERCLA), 42 U.S.C. § 9601-9675
Emergency Planning and Community Right to Know Act (EPCRA) (also known as SARA Title III), 42 U.S.C. §§ 11001-11050
Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1356
Federal Hazardous Material Transportation Statute, 49 U.S.C. §§ 5101-5127

5-11.102 Other Criminal Provisions

Experience has shown that cases involving violations of the federal environmental laws identified in USAM 5-11.101 also may involve violations of certain other federal statutes. Therefore, the Environmental Crimes Section is empowered to investigate and prosecute violations of additional criminal statutes when such violations arise within the context of environmental crimes. Examples of some of the statutes which may be involved in those cases include, but are not limited to, the following:

Statute	Subject Matter
18 U.S.C. § 2	Aiding and abetting
18 U.S.C. § 287	False claims
18 U.S.C. § 371	Conspiracy
18 U.S.C. § 641	Theft or conversion of public property or money
18 U.S.C. § 1001	False statement
18 U.S.C. § 1341	Mail Fraud
18 U.S.C. § 1343	Wire Fraud
18 U.S.C. § 150	Obstruction of administrative proceedings
18 U.S.C. §§ 1621-1623	Perjury

5-11.103 Notice of Case Initiation

The Case Initiation Report formerly described in the United States Attorneys' Manual for environmental crimes is abolished. When a United States Attorney's Office opens a case file for an environmental case or matter, the Office will inform the Environmental Crimes Section, which it may do by entering the case or matter in the Department's computerized case tracking system and identifying the case type as "environmental." If the case or matter is not identified as "environmental" in the case tracking system (for example, due to data entry limitations), the office will inform the Environmental Crimes Section by telephone or in writing. When ECS opens a case file to initiate a case or matter, the Section Chief will provide notice to the United States Attorney for the district in which the crime is alleged to have occurred and will confer with the United States Attorney's Office pursuant to USAM 5-11.104 or USAM 5-11.105.

5-11.104 Responsibility for Case Development and Prosecution

Responsibility for the approval, investigation, and prosecution of environmental crimes, except in cases of national interest, normally rests with the United States Attorney's Office. With the agreement of the United States Attorney's Office, ECS may participate as a partner, as the lead, or otherwise in such cases. Cooperation and

consultation between United States Attorney's Offices and ECS is encouraged, in order to make the most effective use of the Department's resources. When ECS participates in a case, there should be a clear understanding between the offices concerning the allocation of case responsibility.

5-11.105 Cases of National Interest

A case is of national interest if it is a case that presents a novel issue of law (including the first case under a statute, provision, or regulation), a case with simultaneous investigations in multiple districts (unless the United States Attorney's Offices in each such district and the ECS conclude that national interests are not involved), a case with international or foreign policy implications, or an urgent or sensitive case as defined in USAM 1-10.230. In a case of national interest, the United States Attorney's Office and ECS will participate jointly as co-counsel from the initiation of the investigation through prosecution, unless otherwise agreed. A case may be identified as one of national interest by the United States Attorney's Office or the Assistant Attorney General for the ENRD.

5-11.106 Exchanging Case Information

Among ECS' other responsibilities, it is a clearinghouse for information about environmental prosecutions and a source of expertise about the handling of such cases. United States Attorney's Offices are encouraged to communicate with ECS early in environmental investigations and prosecutions to benefit from ECS' information and expertise, and to provide ECS with information about successes, obstacles, and strategies that ECS may share with other prosecutors. As part of this consultation, United States Attorney's Offices are encouraged to provide ECS with advance notice of indictments. United States Attorney's Offices are encouraged to consult with ECS on indictments and other matters with sufficient lead time to allow ECS to have time to provide meaningful input. In any event, United States Attorney's Offices will provide copies of indictments or informations within two days after filing. The Attorney General expects that ECS will participate in implementing the Assistant Attorney General's responsibilities pursuant to 28 C.F.R. § 0.65 and that each United States Attorney's Office will provide information to ECS to assist it in this purpose, including responding fully and expeditiously to reasonable requests for information.

5-11.107 Notification of Case Resolutions

When ECS is not participating in a case, the United States Attorney's Offices shall provide ECS with notice of case resolutions by providing ECS with copies of disposition documents (including any plea agreements) when judgment is entered, except as provided in USAM 5-11.108 and 5-11.115.

5-11.108 Dismissals

In the case of dismissal of indictments, informations, or complaints in criminal cases involving violations of the statutes identified in USAM 5-11.101 except when a superseding indictment has been returned or an information or a complaint has been filed against the same defendant or when the individual defendant has died, notification of the dismissal (or, in the case of a written dismissal, a copy) shall be provided to ECS so that it is received seven days before filing.

5-11.109 Declinations

When a United States Attorney's Office or ECS declines a case and writes a substantive memo to the file or to the investigative agency, either office will promptly provide a copy of the declination memo to, respectively, ECS or the United States Attorney's Office for the district in which the crime is alleged to have occurred. Nothing in USAM 5-11.104 is intended to limit ECS' authority to prosecute a case declined by a United States Attorney's Office after consultation with that office, nor shall these provisions limit the authority of a United States Attorney's Office to prosecute a case that ECS has declined for reasons that ECS advises do not involve policy considerations.

5-11.110 Staffing

The appointment of Special Assistant United States Attorneys shall be approved by the United States Attorney of the relevant district and the Assistant Attorney General for the ENRD. In their approval process, the United States Attorney and the Assistant Attorney General should seek to ensure sensible and efficient use of government resources.

5-11.111 Policy-Making, Support, and Other Functions of the ENRD

In addition to its litigation activities, ECS helps the ENRD fulfill its other responsibilities:

- Setting policy nationally for the prosecution of environmental crimes;
- Providing training to United States Attorney's Offices, federal investigative agencies, and others;
- Providing expertise, information, and support concerning environmental prosecutions nationally, including providing a clearinghouse of prosecution-related documents; and
- To use environmental criminal enforcement to address environmental and compliance problems, consistent with the standards of federal prosecution.

United States Attorney's Offices are encouraged to provide ECS with copies of important pleadings, briefs, search warrant applications, grand jury subpoenas, and similar case documents so that such documents can be made available to other prosecutors.

5-11.112 Parallel Proceedings

Because many of the environmental statutes specifically provide for criminal, civil, and administrative sanctions (*see, e.g.*, 33 U.S.C. § 1319(a), (b), (c), and (d)), this is an area of the law especially susceptible to parallel proceedings. Such proceedings may be appropriate, for example, when in the course of the civil case the government receives evidence of deliberate violations of the law meriting criminal prosecution or when a criminal investigation uncovers evidence of an on-going violation causing environmental contamination which should be stopped quickly through an injunctive action.

Although they may be appropriate in particular circumstances, parallel proceedings must be handled carefully in order to avoid allegations of improper release of grand jury material or abuse of civil process. Therefore, in any case under any of the statutes identified in USAM 5-11.101 in which parallel proceedings arise, the United States Attorney's office shall contact the Environmental Crimes Section for the purpose of coordinating the parallel proceedings. *See also* USAM 1-12.000.

5-11.113 Coordination with State Programs

Most states have environmental enforcement programs which overlap, in whole or in part, with federal programs. United States Attorneys should familiarize themselves with state environmental enforcement laws and state enforcement officials. Particular attention should be directed toward the following aspects of state-federal relations in the environmental enforcement field:

- A. State environmental enforcement agencies may be a valuable source of information on suspected violations of federal environmental statutes. United States Attorneys may be in a position to assist in apprising state officials of the nature of the local federal enforcement program and in developing methods for exchanging information on suspected violations;
- B. State authorities often possess evidentiary materials which are relevant to pending federal court proceedings. United States Attorneys should be aware of the nature and extent of the states' investigatory resources and should make provision in appropriate circumstances for the exchange of information on pending cases with state authorities;
- C. Frequently a particular activity constitutes a violation of both federal and state law. When state officials are proceeding with an environmental enforcement case which may include violations of federal law, the United States Attorney in the affected district should monitor that state activity. If it appears that all federal interests in the case will be vindicated in the state court action, action in federal court may be an unnecessary duplication of effort. On the other hand, if federal interests will not be protected completely in state court, federal proceedings may be warranted. *See also*, USAM 9-2.142 and 9-27.240.

5-11.114 Individual and Corporate Defendants

- A. Congress has demonstrated its intent that individuals, as well as corporations, should be criminally prosecuted for violations of federal environmental laws, *see, e.g.*, 33 U.S.C. §§ 1319(c)(5) and 1362(5), thereby recognizing the fact that the unlawful acts or omissions of corporations actually can be traced to individual officers or employees. That Congressional intent should be given serious consideration in the development of prosecutions for violations of the statutes identified under USAM 5-11.101.1
- B. In any case against both a corporation and any of its individual employees the willingness of the offending corporation to enter a guilty plea is not a basis for dismissal as against the individual.

5-11.115 Plea Negotiations and Agreements -- "Global Settlements" -- Alternative Sentencing

- A. Without the express approval of the Assistant Attorney General, Environment and Natural Resources Division, in any criminal case arising under the statutes identified in USAM 5-11.101 no plea agreement will be negotiated which compromises the right of the United States to any civil or administrative remedies under those statutes. Efforts by defendants to effect such results may arise in the context of so-called "global settlement" offers.
- B. The Assistant Attorney General for the Environment and Natural Resources Division will consider a policy for plea agreements that include "alternative sentencing," meaning a sentence other than fine, imprisonment, or restitution to specific entities for out-of-pocket expenses.

5-11.116 Handling of Appeals

All appeals in criminal cases arising under the statutes identified in USAM 5-11.101 shall be handled as provided for in USAM 5-8.300 and Title 2. When a United States Attorney's Office makes a request to handle an appeal, such a request will be resolved by agreement between the United States Attorney's Office and the Chief of the Appellate Section of the Environment and Natural Resources Division. In jointly resolving such a request, the following factors among any others should be considered on a case-by-case basis and, if necessary, discussed:

- The relative advantages in this case of staffing the appeal with an Assistant United States Attorney who tried the case or with an appellate lawyer who was not involved in the trial;
- The relative advantages in this appeal of the United States Attorney's local perspective or the Environment and Natural Resources Division's national perspective;
- Whether there are issues in this appeal on which components of the government may have differing viewpoints; and
- The available resources of each office, especially relative to the briefing and argument schedule of the appeal.

Copies of any draft briefs prepared by a United States Attorney's Office on behalf of the government shall be forwarded to the Appellate Section in sufficient time to allow review, comment, and approval by the Section and the Assistant Attorney General. Copies of any draft brief prepared by the Appellate Section shall be forwarded to the United States Attorney's Office in sufficient time to allow review, comment, and approval by that office. In any appeal, copies of all other briefs by other parties shall be promptly forwarded by the United States Attorney's Office to the Appellate Section.

5-11.117 Notice of Appeals

USAM 2.200 describes the manner in which United States Attorney's Offices forward notices of appeal or requests to take an appeal to the Environment and Natural Resources Division. For environmental crimes, the Division designates ECS as the unit to which such notices and requests should be sent. ECS will forward the notices and requests to the Division's Appellate Section.

5-11.118 Record on Appeal

Whenever an appeal is taken in a case arising under any statute identified in USAM 5-11.101 for which the United States Attorney has taken primary trial level responsibility, and that appeal is to be handled by the Environment and Natural Resources Division, the United States Attorney is responsible for assembling and transmitting to the Environment and Natural Resources Division those items which constitute the record of the case of the trial court level.